

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of	)	
	)	
Review of the Commission's Regulations	)	MM Docket No. <u>91-221</u>
Governing Television Broadcasting	)	
	)	
Television Satellite Stations Review of	)	MM Docket No. 87-7
Policy and Rules	)	

**COMMENTS OF THE NETWORK AFFILIATED STATIONS ALLIANCE**

The NBC Television Affiliates Association, the CBS Television Affiliates Association and the ABC Television Affiliates Association (together, the "Network Affiliated Stations Alliance" or "NASA") hereby submit their comments in response to the second further notice of proposed rulemaking in the above-referenced proceeding.<sup>1/</sup> NASA submits these comments for the limited purpose of responding to an assertion in the Notice that television broadcasters are "trying to reach" only those viewers located within a station's Grade A contour. Notice at ¶ 11. While NASA does not take a position on the proposed "Grade A/DMA" test for determining compliance with the duopoly rule, the Commission should not base any determination in this proceeding on the erroneous premise that television broadcasters do not intend to reach viewers in areas outside the Grade A contour. Rather,

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<sup>1/</sup> Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Review of Policy and Rules, *Second Further Notice of Proposed Rulemaking*, MM Dkt. Nos. 91-221, 87-7, rel. Nov. 7, 1996 (the "Notice").

the Commission should recognize, as it has in many other contexts, that the Grade B contour represents at the very least the area within which a station is broadly viewed.

First, the Commission's Rules demonstrate that the Grade B contour defines the scope of a television station's expected viewing area. Section 73.683(a) describes the Grade A and Grade B contours as indicating "the approximate extent of coverage" for a television station. 47 C.F.R. § 73.683(a). Applicants for new or modified television facilities are required to provide both their Grade A and Grade B contours to the Commission. 47 C.F.R. § 73.684(c)(4). It is precisely because a Grade B contour provides an objective prediction of the area actually served by a television station that the Commission has reason to require its filing.

The validity of the Grade B contour in predicting actual coverage is borne out in practice. Television licensees do not restrict their efforts to serve viewers to those who live within the Grade A contour. For instance, in the New York market, most Grade A contours exclude Ocean, Mercer and Hunterdon and Sussex Counties in New Jersey, most of Suffolk County on Long Island and Bridgeport and Norwalk in Connecticut. Nevertheless, the news programming and public affairs activities of these stations often reflect concerns in those communities, and they are widely viewed. Indeed, in the last year in which these data were reported, the *Television and Cable Factbook* showed that the VHF stations in the New York market all had net weekly circulation of 25 percent or more in each of these communities

and, in most cases, had net weekly circulation of 50 percent or more.<sup>2/</sup> Recent Commission determinations of significantly viewed status for must carry purposes also show that television stations often are significantly viewed outside their Grade A contours.

Moreover, the accuracy of the Grade B contour as a measure of actual viewing is confirmed by the Satellite Home Viewer Act (the "SHVA"). The SHVA was intended to provide a special exception to basic copyright law for consumers who did not have access to over-the-air network television. Under the SHVA, a consumer may obtain network programming from a satellite provider if he or she cannot receive a Grade B intensity signal at the location where the satellite programming is to be delivered. 17 U.S.C. § 119(a)(2), (8). Congress recognized in the SHVA that television broadcasters serve all consumers who can receive a Grade B signal. The Commission cannot conclude otherwise.

The Commission cannot base its determination in this proceeding on the conclusion that television stations do not intend to serve viewers located outside the Grade A contour but within the Grade B contour. While other justifications described in the Notice may well be sufficient to adopt the proposed rule, the Commission cannot find that television stations intend to serve only those viewers within the Grade A contour.


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<sup>2/</sup> See *1993 Television and Cable Factbook*, Stations Volume, at A-791 to A-795. Similarly examples can be found in many markets. See, e.g., *id.* at A-386 (WBBM-TV, with net circulation of 50 percent or more in 9 counties located entirely outside Grade A contour).

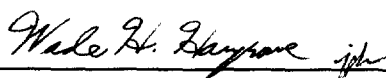
For all these reasons, the Network Affiliated Stations Alliance respectfully requests that the Commission act in accordance with these comments.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**


I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 7th day of February, 1997, the foregoing "Comments" were sent via hand delivery to the following:

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